

# STAFF REPORT

**Case No. LVCU 2016-0001**  
**Convenience Store (7-Eleven) with Fuel Sales in the C-2 District**  
May 12, 2016



**TOWN OF LOVETTSVILLE**



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Planner/Zoning Administrator

### **Summary:**

The Town of Lovettsville has received an application from property owner 7-Eleven, Inc. for approval of a Conditional Use Permit (CUP) in accordance with Section 42-33 of the Zoning Ordinance to allow the establishment of a new convenience store building, including retail fuel sales and fuel canopy, on their property located in the C-2 Mixed Use Business District. The proposed use of the building is considered a convenience store with fuel sales, which is listed as a conditional use in the C-2 District pursuant to Section 42-259(b)(31) as amended on December 10, 2015. The subject parcel is located at 1 East Broad Way and is further identified as Loudoun County Parcel Identification (PARID) Number 369-10-9147-000.

### **Review Process:**

The procedure for reviewing a request by a property owner for approval of a conditional use permit is set forth in Section 42-33 of the Town Code:

1. The owner submits an application for a conditional use permit on a standard form provided by the Town and pays the required application fee.
2. The applicant submits a written statement describing the proposed use and hours of operation.
3. The applicant submits fifteen (15) copies of a concept plan containing all information required by Sec. 42-33 (e) of the ordinance.
4. Upon receipt of a complete application, the Zoning Administrator sets the time and place for the public hearing before the Planning Commission and prepares the advertisement in the local newspaper to notify the public of the date, time, subject and location of the hearing.
5. The Planning Commission and Town Council hold separate public hearings or a joint public hearing on the owner's application.
6. The Planning Commission forwards to Town Council its recommendation and a statement stating the reasons for the recommendation.
7. The Town Council may approve or deny the application, and may impose reasonable conditions and safeguards as deemed necessary for the protection of the general welfare and individual property rights, and to ensure compliance with the intent and objectives of the zoning ordinance. The applicant shall have the burden of establishing that the proposed use is consistent with the public health, convenience, safety and public welfare of the surrounding community.

Staff has reviewed the concept plan and application to ensure that they contain all information required under Sec. 42-33 (e) of the Town Code. Staff has determined that the concept plan submitted contains all required information, and forwarded a letter to that effect on February 22, 2016 to the applicant. In the letter, staff requested additional items of information that are deemed necessary for a detailed review of the applicant's proposal at this time, including details regarding underground storage tanks and water quality protection. A copy of the letter is attached.

### **Existing/Proposed Conditions:**

The subject property is located directly across the street from the northeast corner of the Town Square at the intersection of S. Berlin Pike and E. Broad Way (see Appendix 1).

### **Existing Buildings/Uses:**

The 0.9-acre parcel is considered a corner lot and contains a retail building consisting of approximately 2,243 square feet of gross floor area (GFA). The building was originally constructed in 1979 as a High's Convenience Store and has remained virtually unchanged since that time. The property is located in the C-2 Mixed Use Business District. The building is considered conforming with respect to the minimum required front (15 feet), side (10 feet) and rear (35 feet) yards (i.e. setbacks) in the C-2 District and conforms to the maximum height requirement (35 feet). The structure and asphalt parking area occupy approximately half of the parcel; the remaining parcel area located between the building and N. Church Street consists of an open, grassed area.

The subject parcel is bounded by residentially-zoned (R-3) property to the north (see Appendix 4, Photo 13); this narrow strip of land which contains Keister Lane is owned by the New Town Meadows Homeowners' Association (HOA). The parcel to the northeast is owned by the U.S. Postal Service and contains the Lovettsville Post Office. To the southeast and southwest lie a bank (BB&T) and doctor's office (Leesburg Sterling Family Practice), respectively, both of which are in the C-1 District. The Town Square, situated in the T-C District, is located to the west.

The store was converted from a High's to a 7-Eleven sometime in the mid-1980s. A "convenience store" has been listed as a conditional use in the commercial zoning district where the subject property is located since at least September 1987. Staff has been unable to locate any records older than 2013 regarding any zoning approvals or authorizations for the existing store at 1 E. Broad Way. The most recent zoning case involving the subject property consists of a conditional use permit (Case No. LVCU 2013-0003) issued on August 8, 2013 to authorize the existing convenience store to expand its hours of operation to 24 hours a day, seven days a week. On December 10, 2015, the Town Council amended Section 42-259 of the Zoning Ordinance to make convenience stores which include the retail sale of fuels a conditional use, and convenience stores which do not a by-right use, in the C-2 District. The result of this change is that the existing store is now considered a by-right use and replacement of the convenience store building alone would only require issuance of a zoning permit by the Zoning Administrator.

### **Proposed Use:**

The proposed use is considered a *convenience store*, which is defined in the ordinance as:

A small-scale commercial establishment designed and intended to serve daily or frequent trade needs of the surrounding population, characterized by the retail sale of a limited line of groceries and household items generally purchased in small quantities and intended for the convenience of shoppers, including pre-

packaged food products, tobacco, periodicals, medicines, cosmetics, and limited beer and wine items. Such stores may have on-site service of food or drink for immediate consumption and may include the dispensing of fuel for retail sale on the premises, subject to any additional requirements which may be applicable to such uses or activities in the zoning district where located.

A convenience store which includes the retail sale of fuels is listed as a conditionally-permitted use in the C-2 District. Conditional uses are those which are subject to discretionary (as opposed to administrative) review because of their scale, location requirements, potential safety hazards, or traffic or other impacts. As such, the Planning Commission may recommend and the Town Council may impose reasonable conditions and safeguards as deemed necessary to mitigate potential impacts for the “protection of the general welfare and individual property rights, and to ensure compliance with the intent and objectives of the zoning ordinance.”

According to the applicant’s statement of justification, the convenience store will continue to operate 24 hours a day and seven (7) days a week in accordance with conditional use permit approved by the Town Council in 2012. This conditional use permit was pursued in order to afford relief from the limits established by Section 42-257 (2) of the zoning ordinance, which restricts businesses operating in commercial zoning districts to the following hours of operation:

“Any business located within 100 feet of the nearest property line of a residential use, located within a residential district, shall close to the public not later than 11:00 p.m. each day and shall reopen earlier than 7:00 a.m. All businesses within the Town limits shall close to the public not later than 12:00 midnight and shall not reopen earlier than 6:00 a.m.”

*Comment:* Staff advises that conditions be attached to any approval of the conditional use permit in order to ensure that redevelopment of the convenience store and addition of fueling facilities does not adversely affect public health, safety, or neighboring properties. Conditions regulating vehicular, pedestrian and bicycle traffic, underground storage tanks, water quality from stormwater runoff, landscaping/buffering, and aesthetics are considered reasonable if justified by a thorough analysis of the use and its anticipated effects on surrounding properties.

#### Buildings and Structures:

The property owner intends to demolish the existing store and replace it with a new 3,000 square-foot convenience store building and 1,908 square-foot, fuel canopy structure. Both structures are required to meet minimum yard (i.e. setback) and maximum building height requirements. The minimum yard requirements in the C-2 District are:

- Front yards: Minimum 15 feet;
- Side yard: Minimum 10 feet (adjacent to Keister Lane<sup>1</sup>); and

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<sup>1</sup> The subject parcel is considered a corner lot under the definition in Sec. 42-2. Therefore, the yards lying adjacent to E. Broad Way and N. Church St. are both considered front yards, and no building or structure may be closer than fifteen (15) feet from the adjoining property lines.

- Rear yards: Minimum 35 feet, except the minimum rear yard shall be 15 feet where a building or structure abuts a parcel located in a commercial or industrial zoning district.<sup>2</sup>

The proposed convenience store building and fuel canopy structure comply with the minimum front, side and rear yard setback requirements, with the exception of the required 35-foot rear yard setback, which is the subject of zoning amendment LVZA 2016-0002 initiated by the Planning Commission in order to reduce the required rear setback, as in this instance, where a commercial building abuts commercially- or industrially-zoned property (see footnote #2 below).

The maximum height for buildings and structures in the C-2 District is 35 feet for a principal building and 15 feet for an accessory structure. The proposed height of the convenience store (i.e. principal) building is approximately 21 feet and 4 inches as measured to the midpoint<sup>3</sup> of the roof for the portion of the structure featuring a gable roof, which is also the approximate height to the top of the mansard parapet wall. Per zoning amendment LVZA 2016-0001, fuel canopies are specifically exempted from the maximum height for accessory structures provided the height as measured from the finished grade directly beneath the canopy at its shortest height to the canopy ceiling does not exceed fifteen (15) feet, and provided further that the overall height of a canopy does not exceed 18 feet 3 inches (18'3"). The proposed fuel canopy appears to comply with these requirements as demonstrated on the architectural elevations.

The architectural elevations show an EIFS-sided main building with a stacked stone veneer at the base of the structure and dormers to match the Germanic-themed architecture of the commercial buildings in Lovettsville Square. The flat roof covering the majority of the structure is hidden behind a mansard-style parapet wall. The southwestern corner of the building contains a gable-roof feature with a decorative bracket and awnings almost identical to those on the buildings in Lovettsville Square. The two rear elevations are mostly unadorned and contain the service entrances to the building as well as the roof access. Staff has requested the addition of faux shuttered windows with window boxes similar to the architectural treatments added to the rear of the Lovettsville Square buildings.

The fuel canopy has been designed with columns wrapped in stacked stone veneer to match the base of main building. The fascia of the canopy is also designed to match the siding on the main building. Earlier building elevations provided before the CUP application was officially submitted show a mansard-style parapet wall covering the roof of the canopy similar to the one on the main building. Subsequently, the applicant removed this feature in order to reduce the profile of the structure as viewed from the Town Square, thereby making it less visually imposing.

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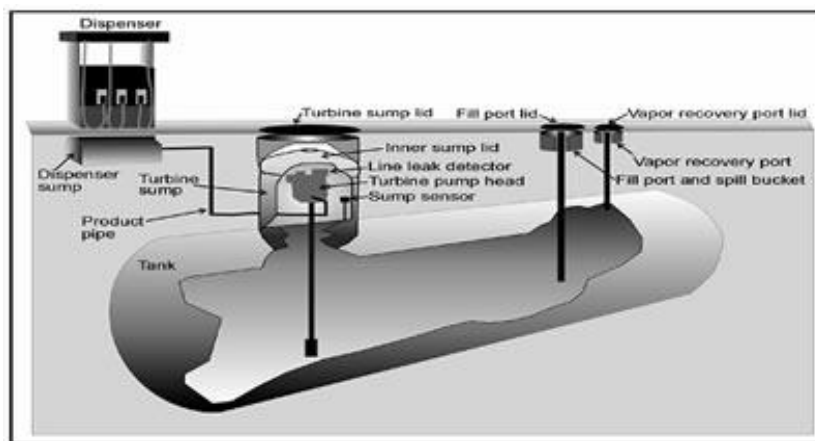
<sup>2</sup> Underlined text represents the language recommended by the Planning Commission on March 2, 2016 and is currently pending approval by the Town Council per Case No. LVZA 2016-0002.

<sup>3</sup> The midpoint is measured from the average elevation of the finished grade at the base of the structure to a point that is the average distance between the highest eave and the highest point of the roof (Sec. 42-2).

## Underground Storage Tanks

The applicant proposes the installation of two (2) Xerxes® double-walled, 10-foot diameter fiberglass underground fuel tanks, one for regular unleaded gasoline and one multi-compartment tank for storing premium-grade unleaded fuel and diesel. The system includes a Vender-Root TLS-350 Plus! for in-tank inventory monitoring and leak detection as well as OPW® EDGE™ Double-Wall Spill Containers to “prevent spilled product from entering the soil near the fill and vapor-return riser connections on the USTs during normal tank-fill operation, or in the event of tank overfill.” According to the specifications submitted to the Town, the system also includes installation of OPW® Fiberglass Dispenser Sumps at the fuel pumps/dispensers in accordance with new federal and state regulations for secondary containment where the lines connect to the dispensers. The applicant is proposing to install four (4) dispensers, or eight (8) separate fueling stations (one on each of side of each dispenser).

Underground Storage Tanks (USTs) which contain hazardous substances, including petroleum, are subject to the federal and state laws and regulations, principally the U.S. Solid Waste Disposal Act of 1965, as amended, commonly known as the Resource Conservation and Recovery Act (RCRA). RCRA is considered the principal federal law in the United States governing the disposal of solid waste and hazardous waste, and is designed to track and control the life cycle of hazardous wastes from the time of their initial generation (i.e. the “cradle”) to the time of their ultimate disposal (i.e. the “grave”)<sup>4</sup>. The 1984 and 1988 amendments to Subtitle I of the law created a federal program of UST oversight, culminating in the adoption in 1988 of



**Figure 1: Diagram showing components of a typical UST for a gas station or convenience store.**

federal regulations for USTs enforced by the U.S. Environmental Protection Agency (EPA). Congress passed the Energy Policy Act in 2005 to strengthen federal requirements on USTs by adding new leak detection and enforcement provisions to the program and improving operations, inspections and maintenance provisions. In 2015, the federal regulations (40 CFR parts 280 and 281) were further revised to

incorporate these elements, address updates to current technologies and practices, and address USTs that were deferred in the 1988 regulations. States and territories are authorized to operate an approved state program in lieu of the federal program provided that state programs must be at least as stringent as EPA's.

<sup>4</sup> Plater, Zygmunt J.B., *Environmental Law and Policy: Nature, Law, and Society, Second Edition*. St. Paul, MN: West Group, 1998, pg. 763.

The Virginia Department of Environmental Quality (DEQ) implements an approved UST program in Virginia under Article 9 of State Water Control Law, originally enacted in 1987. Thus, the federal law and regulations are the law of the land nationwide, and the DEQ and local building departments/fire officials implement them in Virginia for the EPA and under State law. In Virginia, there are approximately 75,000 USTs (19,000 active) at 25,000 facilities with at least 3,000 owners. Technical and financial requirements for USTs in Virginia are located in 9VAC25-580 and 9VAC25-590 of the Virginia Administrative Code, respectively. Secondary containment (e.g., double-walled tanks and pipe) is required for any new and replaced UST systems installed within 1,000 feet of a public water supply or potable well. UST systems (tank and/or piping) installed after September 15, 2010 are required to perform monthly interstitial monitoring for release detection, which means the interstitial space between the inner and outer walls of the tank and piping must be monitored monthly. A monthly record of the interstitial monitoring must be kept for 12 months and provided to the UST inspector upon inspection. Virginia Code Section 36-99.6 provides for local building code officials to permit and inspect UST installations, upgrades, repairs, and closures statewide in support of the program.

The Town originally adopted a Wellhead Protection Plan in 2005 in order to protect the public groundwater supply from potential sources of contamination, including USTs, which are listed as a land use of concern in Appendix B of that document. The Plan establishes two distinct wellhead protection areas or zones within the Town. Zone 1 is a 1,000-foot, fixed radius around each of the Town's public water supply wells and is considered a "priority zone" for managing potential sources of contamination. Zone 2 is a one-mile radius around each of the Town's wells representing an estimate of the total recharge zone to each well. Although the plan did not specifically distinguish between each zone in terms of potential regulations, Zone 1 is considered more critical to preventing groundwater contamination. An updated map depicting the areas covered by Zone 1 was added to the plan in 2007. In 2015, the Town of Lovettsville received funding from the Virginia Department of Health to update the plan in order to provide more specific recommendations on the requirements for USTs within each of the two zones. Although updates are still ongoing and only available in draft form, the plan shows that the proposed USTs and lines are located safely outside of the Zone 1 Wellhead Protection Area for the two closest active wells: the Town Center well located directly behind the pavilion and Well 3 located at the end of Park Place.

The entire 7-Eleven site is located within 1,000 feet of Well 4 on N. Church Street, but this well has been inactive since 2011 when the Town Council directed staff to evaluate what would be required to remove Well 4 from the Town's water supply system. In the memo to Town Council, the Project Manager stated the rationale for eliminating these wells, concluding that "staff and Loudoun Water feel that these two wells are good candidates for removal from the system due to their low water quality and capacity and the cost for repairs and operations...the costs to shutter these facilities will be much less than what would be needed to repair the facilities." Subsequently, the Project Manager sent a letter to VDH stating the Town's desire to "mothball" these two wells, thereby removing them from the public water supply system and eliminating the need to conduct raw water sampling as required by VDH. Since that time, the plumbing and electrical equipment have been disconnected and the well has been removed as either a

Primary or Emergency water supply well, reducing the Town's overall operational capacity from the VDH permitted amount of 724,800 GPD to 544,800 GPD.

*Comment:* The Town's consultant responsible for updating the Wellhead Protection Plan (Tetra Tech) has identified certain "gaps" in the federal and state regulations now that the federal regulations have been recently updated. These gaps are listed in the attached email from Bob Custard to Karin Fellers, Town Engineer, dated February 23, 2016, and mostly involve inspection, testing and reporting requirements of the new federal regulations. The Town's consultant has proposed language to be included in the CUP approval that would compel the developer to comply with those requirements locally even though they have not yet been incorporated into the state regulations. Staff has consulted with the Town Attorney to ensure that such action would be consistent with limited powers conferred to local governments under the Dillon Rule and, thus, would not violate state law.

#### Parking:

The existing asphalt parking lot contains ten (10) off-street parking spaces. The applicant proposes twenty-seven (27) parking spaces including one (1) ADA parking space, for an increase of seventeen (17) parking spaces. The use listed in Section 42-286(a) that most closely matches the proposed convenience store is "sales and rental of goods, merchandise and equipment", which requires "one space per 200 SF of enclosed sales area, for the first 10,000 square feet, plus one space per 600 SF of open outdoor sales or outdoor display area." Applying this formula, twelve (12) total off-street parking spaces are required ( $2,400 \text{ sq. ft.} \div 200 = 12$ ). Even if the more conservative general standard is applied for uses "for which there is no similar parking demand" (Sec. 42-286(b)(2)), which is listed as "one parking space for each 200 square feet of business floor space in the building," fifteen (15) total off-street parking spaces are required ( $3,000 \text{ sq. ft.} \div 200 = 15$ ). The proposed convenience store, therefore, would add considerable additional off-street parking at this location and 80% more parking than what is required by the most stringent off-street parking standard in the zoning ordinance for the proposed use.

The minimum required size of standard (perpendicular) parking stalls is 9 feet by 18 feet (72 square feet total). The parking spaces shown on the plan comply with this standard, with the exception of the handicapped spaces, which must comply with International Building Code (IBC) standards. The minimum required width of drive aisles serving perpendicular parking spaces is 22 feet. All of the drive aisles appear to comply with this standard.

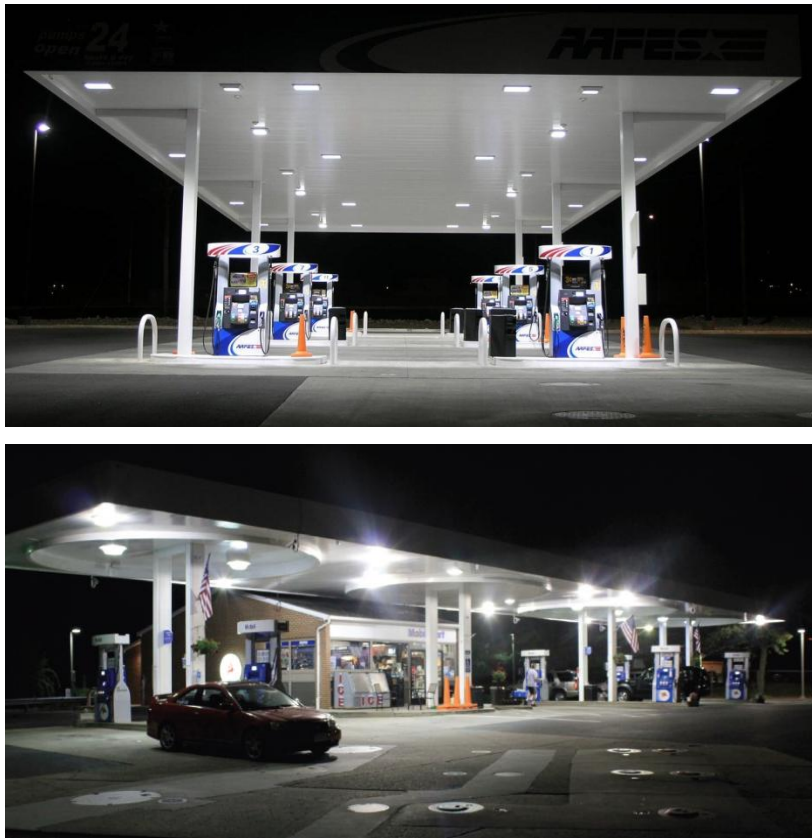
*Comment:* The proposed use complies with the off-street parking requirements of the zoning ordinance.

#### Site Lighting:

All site lighting "shall utilize fully shielded cutoff fixtures and be designed and located so as to prohibit glare onto adjacent properties" in accordance with Sec. 42-257(1). Although the applicant's concept plan and application materials contain no specifications for site or street lighting, the following types of lighting are typically used on a convenience store sites:



1. Floodlighting: Floodlights are typically installed on the side and rear elevations of commercial buildings to provide safety and security.
2. Canopy Lighting: Canopy lights are installed in the ceiling canopy to illuminate the fuel dispensers. Canopy lighting should be designed to illuminate only the area directly beneath the canopy and not the adjacent parking areas and drive aisles. Also, making the fixtures flush or recessed in relation to the ceiling of the canopy makes the light source less visible to adjacent properties, reducing glare and potential for light pollution.



**Figure 2: Canopy lighting should be flush or recessed to illuminate only the area directly beneath the canopy (as in the top photo).**

3. Parking Lot Lighting: Parking lot lighting is used to illuminate parking spaces and areas that are not covered by street lighting, floodlighting or canopy lighting. Standard “shoe box” fixtures and poles are common and acceptable if they meet the above criterion, although ornamental poles and fixtures were provided on the Lovettsville Square project.
4. Streetlights: A photometric study will determine the need for streetlights to illuminate the existing sidewalk in front of the building on E. Broad Way. Streetlights should match the

ones used for Lovettsville Square project. Streetlights are already present on N. Church Street.

#### Landscaping, Buffering and Screening:

The requirements for landscaping, buffering and screening (Article X) in the zoning ordinance apply to any projects, like this one, requiring the submission of a site plan. These requirements include:

1. Preparation of a landscaping plan containing a specific planting schedule including species, size at planting, quantity, location, and details regarding installation, maintenance, etc. The official landscape plan is typically submitted for formal review as part of the site plan for the development. The landscaping depicted and described on Sheet 4 of the Concept Plan should be considered a conceptual landscape plan.
2. Street trees must be planted at the rate of one understory or canopy tree for every forty (40) feet of street frontage. The proposed street trees along E. Broad Way and N. Church Street meet this requirement ( $400 \text{ sq. ft} \div 40 = 10$ ).
3. The perimeter of the parking lot must be adequately landscaped in accordance with Section 42-363. Parking lots adjacent to public streets must provide a continuous landscape area of not less than ten (10) feet in width between the parking lot and property line, and parking lots adjacent to other property lines must provide a continuous landscape area five (5) feet in width between the parking lot and property line. One (1) tree and three (3) shrubs must be planted within these landscaped areas. The landscaped area located between the parking lot and the northeast property line meets the applicable standard. The landscaped areas located between the parking lot and the two adjacent streets contain enough trees, but six (6) additional shrubs [ $(400 \text{ sq. ft.} \div 50 = 8) \times 3 = 24$ ] are required in this area per the ordinance.
4. The interior of the parking lot must contain sufficient landscaping since it contains more than ten (10) spaces. The landscaped area must be at least five (5) percent of the gross parking area and must contain at least one (1) tree per ten (10) spaces. The proposed interior parking lot landscaping meets these requirements.
5. The required width of a landscaped buffer between a commercial use and an adjacent single-family residential use is 35 feet, although the required buffer yard may be reduced in width by up to one-third if the applicant constructs a six-foot tall opaque fence or architectural block wall in order to reduce the potential for conflict between uses. The Town may also "choose to waive or modify the requirements for landscaping required by this article based upon a review of the landscaping plan by the zoning administrator and where such conditions are deemed to warrant such a change" (Sec. 42-362(a)). The applicant is requesting a waiver to substitute a variable width buffer (12 to 35 feet in width) along the boundary with the New Town Meadows HOA parcel located to the northwest, which is zoned R-3. The proposed buffer area meets the minimum

requirements for required plantings for Buffer Type C in accordance with Sec. 42-364, Table 6-2.

6. The required tree canopy cover for the commercial area is 10%. The proposed street, buffer and parking lot tree canopy appears to meet this requirement.
7. All loading areas, dumpsters, maintenance areas, and equipment are to be screened from view from public streets and adjacent properties. The proposed dumpster enclosure and surrounding landscaping meets this requirement.

All proposed plantings must meet the minimum specifications for plant materials and requirements of the plant selection guide found in sections 42-366 and 42-367, respectively. Compliance with these standards will be enforced during review of the site plan.

*Comment:* The proposed landscaping depicted on the Concept Plan meets all requirements except for: (1) the minimum buffer yard requirement, and (2) the required number of shrubs in the landscape area between the parking lot and adjacent streets. The requested reduction in the width of the buffer is warranted in this case because the New Town Meadows HOA parcel is set aside as open space and cannot be developed with single-family dwellings. Therefore, there are no uses on the HOA parcel that are incompatible or conflict with the commercial use proposed on the subject parcel. Staff has been working with the applicant and the New Town Meadows HOA to ensure no net loss in the total number of trees and shrubs planted by obtaining permission from the HOA to authorize the applicant to install additional plantings on the adjacent HOA property equal to the difference between the number required for the full Type C buffer area (35' X 145' = 5,075 sq. ft.), and those required for the reduced buffer area (3,297 sq. ft.), on the 7-Eleven parcel. In terms of trees, the reduced buffer area would require two (2) fewer canopy trees and four (4) fewer understory trees. Staff advises that the Planning Commission authorize the requested reduction in the width Type C buffer area; the Town and applicant will attempt to obtain authorization from the HOA to plant six (6) additional trees and twenty (20) additional shrubs on the adjacent HOA property.

Signage:

The applicant is proposing the following signage on the property:

1. Monument Sign: The monument sign identifying the business on the property consists of an externally-illuminated cabinet sign situated on a masonry foundation which will have a stacked-stone veneer to match the main building and canopy. Each face of the sign will depict the 7-Eleven logo on a white background located above a manual changeable fuel price copy (The modification previously requested to permit an LED fuel price sign has been withdrawn). The proposed sign also exceeds the maximum area allowed by the ordinance (15 square feet) by approximately 1.7 square feet. For these reasons, the applicant is requesting approval of a modification to the maximum sign area of the monument sign as part of this CUP application.

2. Wall Sign: The wall sign on the front of the building consists of an externally-illuminated cabinet depicting the 7-Eleven logo on a white background with the characteristic orange, green and red horizontal stripes extending out from the logo (at center) to the left and right edges of the sign. The sign is 85.3 square feet, which complies with the ordinance requirement that a wall sign may not exceed one square foot for each linear foot in length of the building facade (maximum 90 sq. ft.).
3. Canopy Signs: One 7-Eleven logo sign (3'x3') will be installed on each of the two sides of the fuel canopy located closest to the intersection of E. Broad Way and S. Berlin Pike. The logo will be displayed two (2) feet from one end of each fascia. Sec. 42-403(b)(4) allows signs on no more than two sides of a single canopy, and each sign may not exceed twenty (20) square feet. The tri-colored striping depicted on the previous sign elevations has been removed since the striping is considered a graphic and would be included in the calculation of each sign's area.

*Comment:* The requested modifications to allow a slightly-larger monument sign (approximately 16.7 sq. ft.) than what is authorized by the ordinance (15 sq. ft.) may be considered reasonable whenever the "building size, location, or orientation results in a circumstance which is not adequately addressed in this article" (Sec. 42-408(b)(2)). In this case, the unique diagonal orientation of the main building will make the wall sign less visible to the front of the property, especially from the angle of approaching traffic on S. Berlin Pike. For this reason, the modification is reasonable and justified in the opinion of staff.

#### Transportation:

The transportation improvements associated with this request involve the construction of two commercial entrances, one new, to existing streets bordering the subject parcel. South Berlin Pike (Va. Route 287) is classified by VDOT as a minor arterial, East Broad Way is classified by VDOT as an urban (major) collector street, and North Church Street is classified as a local street although it has not yet been accepted in the state system for maintenance purposes. The applicant is proposing to construct a 30-foot (in width) commercial entrance at the intersection of S. Berlin Pike and East Broad Way and a 35-foot entrance to North Church Street. Both entrances are subject to review and approval by VDOT at the time of site plan submission.

§15.2-2222.1 of the Code of Virginia and the Traffic Impact Analysis Regulations, 24VAC30-155-40, requires localities to send, within 10 business days of their receipt of a complete application, conditional use permit proposals that will *substantially affect* transportation on state highways to VDOT to review and provide comments on the transportation impacts of the proposal. In a jurisdiction like Lovettsville where VDOT has maintenance responsibility for the secondary highway system, a proposal that will generate more than 5,000 vehicle trips per day at the site's connection to a state highway requires preparation of a Traffic Impact Study (TIS). In accordance with state law and regulations, the applicant has prepared and submitted to VDOT a TIS prepared by Gorove/Slade (dated February 4, 2016). The study has been reviewed by VDOT and found to be "acceptable" by the department.

The TIS presents the results of an analysis performed on traffic conditions (volumes and levels of service) with respect to the following:

- Existing Conditions (2015)
- Future Conditions without Development (2017)
- Future Conditions with Development (2017)

The three intersections analyzed were: (1) S. Berlin Pike and E. Broad Way; (2) E. Broad Way and N. Church St.; and (3) the new secondary site entrance to N. Church St (for Future Conditions with Development). Under Existing Conditions, all of the study intersections operate at level of service (LOS) B or better during the AM and PM peak hours. Currently, the worst delay is for southbound thru/left-turning traffic on N. Church Street at the intersection of E. Broad Way, which experiences a 13.4-second delay during the PM peak. The Future Conditions without Development scenario factored in the additional trips generated by the Lovettsville Square development as well as a 1% growth rate. All approaches to the intersections operated at the same A or B LOS as in the Existing Conditions scenario. The Future Conditions with Development scenario demonstrates no increase in delay for most of the approaches analyzed; in fact, most experience a slight improvement. The report concluded that, despite the modest increase in traffic volume, the LOS of the proposed 7-Eleven would be “consistent with existing conditions and no traffic mitigation measures would be required to accommodate the development.” The report also concluded that “no significant increase in the crash rate would be expected at the study intersections.”

North Church Street was constructed as part of the development of the post office parcel. A performance bond was approved by the Town for construction of the street. In 2011, an inspection by VDOT identified a punch list of items that needed to be addressed before the street would be accepted by VDOT for maintenance purposes. To date, these issues have not been fixed, and staff is unsure as to whether the remaining bond amount is sufficient to cover the costs of the necessary improvements, or even whether the bond is still active.

*Sidewalks:* Existing sidewalks are located along the E. Broad Way and N. Church St. frontages of the property. The applicant proposes internal sidewalks in front of and behind the main building to provide pedestrian access to the front (i.e. main) entrance as well as the rear service entrances. These sidewalks will connect on the northwest side of the property to the left side of the main vehicle entrance (on E. Broad) as shown on the concept plan, allowing pedestrians to reach the existing public sidewalk on E. Broad without having to walk across the parking lot. An ADA ramp and crosswalk will need to be constructed at this location for pedestrian safety. The approved plans for the Keister Lane Drainage Improvement Project propose the construction of a sidewalk along the entire road frontage between the 7-Eleven and 2 N. Berlin Pike (where Bonnie’s Restaurant is located). Until that is constructed, pedestrians using Keister Lane to access the convenience store will have cross a grassy area to reach the building entrance. For this reason, staff is recommending the construction of a short sidewalk at this location to connect the Keister Lane pedestrian trail directly to the main building entrance.

*Bicycle Facilities:* The Loudoun County *Bicycle and Pedestrian Mobility Master Plan*, adopted in 2003, concluded that “there is a great need to improve bicycling and walking conditions

throughout Loudoun County,” including in Western Loudoun.<sup>5</sup> The plan contains numerous recommendations and policies aimed at improving conditions for bicyclists in the County. The Route 287 corridor (Berlin Pike) between Purcellville and Brunswick, Maryland is listed as a Primary Road and Connecting Corridor, linking Lovettsville to two major shared-use (i.e. bicycle) trails: the WO&D Trail in Purcellville and the C&O Canal Trail in Brunswick. The plan’s Lovettsville policies state “The County shall work with the Town and VDOT to identify and implement the best approach to providing bicycle facilities along Route 287, which would tie Lovettsville’s trail to the Potomac, the C&O Canal Towpath and the Brunswick MARC station to the north and to Purcellville and the W&OD Trail to the south.” Construction of the first phase of the shared-use trail along S. Berlin Pike in the Town was completed in 2015.

Although quantitative data regarding the extent of recreational bicycle traffic in Lovettsville is scarce, anecdotal evidence suggests that the 7-Eleven is used frequently by solo and group recreational bicycle riders mainly during the spring, summer and fall months, serving as a convenient, centrally-located resting area for bicyclists seeking refreshments such as snacks and drinks. The construction of a larger store offering more of these conveniences, along with the recent completion of the shared-use path along S. Berlin Pike, is likely to increase the attractiveness of this location as a destination for bicyclists and pedestrians travelling within the Town as well as through Lovettsville on their way to regional bicycling destinations. For this reason, staff has been discussing with the applicant the potential for additional bicycle amenities to satisfy increasing demand as part of the proposed construction of a new 7-Eleven convenience store.

Unfortunately, the existing site has limited space to install bicycle amenities given that the redeveloped property will be almost completely covered by buildings, parking, and required landscaping. Land Development Policy No. 11 (pg. 34) of the Loudoun County *Bicycle and Pedestrian Mobility Master Plan* states that “the County will study and determine the scale of development needed to allow for placement of bicycle and pedestrian facilities, located along public roadways, in public access easements on private property. This study will also consider the ability of homeowners’ associations to maintain bicycle and pedestrian facilities.” The subject property is conveniently located adjacent to the a small triangle-shaped parcel of land located at the intersection of N. Berlin Pike and E. Broad Way that is owned by the New Town Meadows HOA. This portion of the HOA property provided primary access via Keister Lane to the parent tract before the subdivision was established. Keister Lane has been closed off to vehicle traffic above 2A N. Berlin Pike, although the gravel lane continues to serve as a legal ingress/egress easement to that parcel. Town staff has approached the HOA to ascertain their willingness to host bicycle improvements on the small outparcel including a bicycle rack, trash container, picnic table, and fix-it station. On May 9<sup>th</sup>, staff met with HOA Board to present a plan and discuss the possibility of the Town acquiring the property for this purpose. The Board agreed in concept to conveying an easement to the Town, but took no formal action. Another possibility is to have the 7-Eleven install the improvements within the VDOT right-of-way subject to the Town and/or applicant receiving the necessary authorization from the department to do so.

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<sup>5</sup> Loudoun County *Bicycle and Pedestrian Mobility Plan*, pg. 24.

*Comment:* In the opinion of staff, a link exists between the anticipated effects of the proposed development and the need for additional bike and pedestrian facilities at this location. Therefore, staff advises that amenities for bicyclists and pedestrians be required as part of the approval if the Town is able to obtain the necessary land, easements and/or authorization from the adjacent property owner(s).

#### Public Utilities:

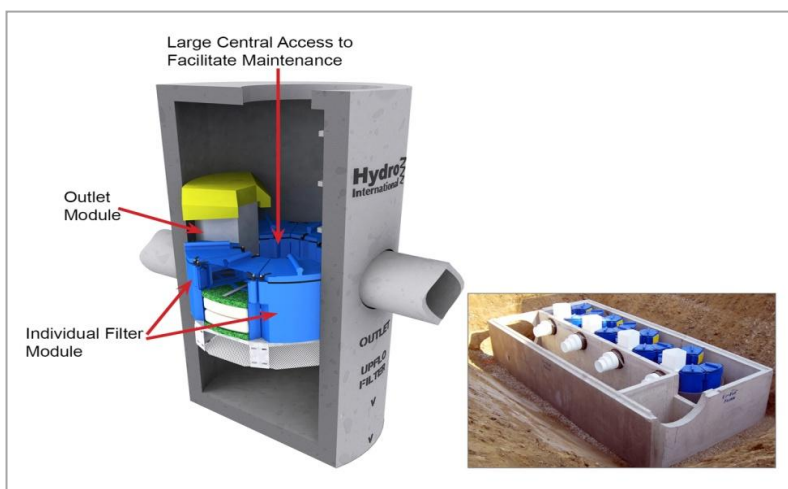
The property is connected to the Town's water and sewer lines, which run under E. Pennsylvania Avenue and N. Church Street. There is also a sanitary sewer line running down Keister Lane from New Town Meadows, connecting to the main at the manhole in E. Broad Way almost directly in front of the existing freestanding 7-Eleven sign. The size of the sanitary lateral serving the building is unknown. The property is currently served by a 5/8-inch water meter located on the corner the property at the intersection of E. Broad Way and N. Church Street. The nearest hydrant is located across the street from the subject property at the northwest corner of S. Church St. and E. Broad Way.

Staff has forwarded the Town's Water and Sewer Compliance Package, including the Meter Sizing Form and Fats, Oils, and Grease (FOG) Compliance Form, to the applicant and requested completion of the forms to determine the necessary upgrade to the water meter and need for and size of a grease removal device for the new store. The applicant has completed the water meter sizing form, which demonstrates that a 5/8-inch meter will be adequate to serve the new store. If a larger meter is desired by the applicant, the upgrade to the meter will require the owner to pay availability fees for water and sewer equal to the difference between the larger meter and the existing one.

The proposed water and sewer lines and facilities will be evaluated upon review of the site plan for compliance with applicable Town and Loudoun Water standards and requirements.

#### Stormwater:

The topography of the site is generally flat and drainage is relatively poor. The parking lot experiences frequent nuisance flooding/ponding that inundates nearly the entire southeastern corner of the parking area during and after heavy rain events. The site drains to stormwater inlets and structures located on E. Broad Way, which are part of the larger Broad Way piped stormwater system and discharge to an unnamed tributary of Dutchman Creek



**Figure 3: Diagram of an Up-Flo™ Stormwater Filter Device manufactured by Hydro International®**

near the intersection of W. Broad Way and Cooper Run Street.

At the request of staff, the applicant has prepared a conceptual stormwater management strategy showing two (2) hydrodynamic separators at the inlets located closest to the fuel canopy and an underground vault to detain and control the release of runoff from the site. The hydrodynamic separators are intended to separate oil, grease and hydrocarbons from the water prior to it entering the underground detention system. Pursuant to the Virginia Stormwater Management Program (VSMP), land disturbances of less than one (1) acre in total area are not required to obtain a VSMP permit from Loudoun County or further treat for stormwater runoff quality. The proposed system will discharge into the existing stormwater manhole located near the base of the existing freestanding 7-Eleven sign. This 27-inch RCP ultimately discharges to the large riprap ditch next to N. Berlin Pike that will ultimately be replaced by an underground concrete junction box to be installed as part of the Town's Keister Lane Drainage Improvement Project.

The stormwater calculations for water quality and quantity, analysis of the capacity of the existing stormwater management facilities to handle additional runoff generated by the development, and adequacy of proposed stormwater management facilities will be further evaluated at the time of site plan review.

#### Comprehensive Plan:

The 2011 Comprehensive Plan contains the following specific statements or policies regarding convenience stores generally and at the subject site:

1. *Economic Development and Housing Policy #5:* Promote the concept of the Town Center and adjacent areas being a focal point for community life not only a concentration of economic development uses.
2. *Economic Development and Housing Policy #16:* Encourage non-residential development to provide pedestrian circulation on-site and pedestrian access to all types of uses on adjacent properties.
3. *Land Use Policy #1:* Locate commercial retail and personal services development in the Town Center commercial core, the area adjacent to the Town Center core extending toward New Town Meadows, and along the western portion of E. Broad Way from S. Locust Street to Berlin Pike.
4. *Land Use Policy #6:* Plan and implement pedestrian facilities using public resources and private development to provide opportunities for walking, shopping, touring, and biking anywhere in the Town.
5. *Land Use Policy #7:* Provide adequate landscape and visual buffers between residential and non-residential uses even if it needs to be in excess of zoning ordinance requirements.
6. *Land Use Policy #8:* Promote and encourage an architectural scale and character for future development and redevelopment that is compatible with the low intensity character of the existing community.
7. *Land Use Policy #17:* Encourage landscaping and beautification within existing and new developments.



8. *Land Use Policy #18*: Encourage well-designed employment uses in order to be compatible with the village character of the Town and to help attract other such uses.
9. *Land Use Plan (Map 5)*: Proposed use: Commercial. Planned land use map category description for "Commercial": Uses in the C-1 and C-2 zoning districts.
10. *Land Bay B Policy #2*: Convenience stores, feed store, manufacturing, and assembly uses are not appropriate.

**Recommendation:**

On April 20, 2016, the Planning Commission forwarded Case No. LVCU 2016-0001 to the Town Council with a recommendation for approval, subject to the following [amended] conditions, which were deemed necessary for the protection of the general welfare and to ensure compliance with the intent and objectives of the zoning ordinance:

1. The installation of fuel (gasoline, kerosene, diesel) storage and dispensing facilities will be permitted so long as: (1) no part of the underground storage tank, piping, and dispensing system is located within 1,000 feet of any Town water supply well (excluding Town Well No. 4, the final status of which will be determined at a later date); (2) all requirements of the Revised Underground Storage Tank Regulations (published on July 15, 2015 in the Federal Register and described in the U.S. Environmental Protection Agency document titled *Musts For USTs Updated 2015*), including requirements scheduled to go into effect beginning on October 13, 2018, will be implemented on or before the date of system startup; and (3) the owner will notify the Town manager of any and all suspected petroleum leaks and releases at the facility within the same 24-hour time period that such releases are required to be reported to the Commonwealth of Virginia;
2. All buildings and structures constructed on the site shall be developed in substantial conformance with the character, massing, scale, materials and colors on the exhibit titled "Review Board Elevations, Proposed 7-Eleven #28400", dated \_\_\_\_\_, prepared by Perry M. Petrillo Associates, PC, which is attached as Exhibit D of the Statement of Justification. Final architectural elevations for all buildings and structures shall be submitted to the Town at the time of site plan submittal in order for the Zoning Administrator to determine compliance with this requirement;
3. During construction of the new convenience store, the applicant shall undertake and complete any improvements, repairs and modifications to the section of North Church Street lying adjacent to the subject parcel necessary and required, as identified by VDOT during the walkthrough inspection conducted on April 22, 2016, to have the street segment accepted by the Virginia Department of Transportation (VDOT) into the secondary system for maintenance purposes, in accordance with the following:
  - a. By September 15, 2016, the zoning administrator shall make a written determination as to whether the Town has obtained the necessary funds from the

Surety named in Bond No. 1811867 in order to make the repairs to the street segment as described herein. If such determination is made in the affirmative, the Town and applicant shall enter into a development agreement, in a form acceptable to the Town Attorney, which shall state that, upon completion of construction of any improvements subject to Bond No. 1811867 to VDOT standards by the applicant, the Town shall issue payment to the applicant for the costs of constructing any such improvements using the funds that have been paid by the Surety to the Town; or

- b. If, pursuant to paragraph (a), the zoning administrator determines that the Town is unable to obtain the necessary funds from the aforementioned bond, the applicant shall undertake improvements to North Church Street described herein at his expense, provided that construction of any of the improvements, repairs and modifications to the street segment which is the subject of this condition by the Principal named in the bond by September 15, 2016 shall relieve the applicant of the need to undertake said improvements;
4. The requested modification to the required width of the Type C Buffer Area located on the subject parcel adjacent to Parcel Identification (PARID) Number 333251081000 owned by the New Town Meadows Homeowners Association (HOA), shall be approved, provided the applicant obtains the necessary written authorization from the HOA to install up to two (2) canopy trees and four (4) understory trees as otherwise required for the full Type C Buffer Area, on the HOA parcel. Failure of the HOA to grant such written authorization shall relieve the applicant of the need to install any additional trees on the HOA property;
5. The requested modification(s) to the maximum area permitted for a monument sign pursuant to Section 42-403(b)(2) shall be approved. No modifications to the requirements of the zoning ordinance pertaining to canopy or wall signage shall be authorized by issuance of this permit;
6. During construction of the new convenience store, the applicant shall install bicycle and pedestrian improvements on Parcel Identification (PARID) Number 333251081000 or VDOT right-of-way adjacent to North Berlin Pike as necessitated by the proposed use and agreed upon by the Town and applicant, subject to the Town acquiring the necessary land or easement from the owner or Land Use Permit from VDOT, as applicable, no later than September 15, 2016, thereby making the property available to the applicant for construction and installation of the following improvements, at a maximum, for which the Town shall assume responsibility for maintenance:
  - a. Picnic table, shelter and concrete pad;
  - b. Bicycle rack and concrete pad;
  - c. Bicycle repair station and concrete pad;
  - d. Concrete pad for installation of a trash receptacle by the Town; and

- e. Sidewalk or walkway connecting the sidewalk(s) on the applicant's parcel to the picnic area;
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- 7. Streetlights shall be installed along E. Broad Way to match the style and appearance of the pendant-style streetlights to be installed on the Town Square by the owner/developer of Lovettsville Square project. The number and placement of streetlights shall be determined by a photometric study submitted as part of the site plan for the project; and
  - 8. All fuel canopy lighting shall be flush or recessed in relation to the canopy ceiling in order to minimize glare.
  - 9. In the event the Town is unable to acquire land or permit pursuant to Condition No. 6 by the deadline prescribed therein, the applicant shall install on his property at least two (2) picnic tables and one (1) trash receptacle located on one or more concrete pads to match the style and appearance of the picnic tables and trash receptacles located on the Town Green, as well as two (2) bicycle racks in order to meet the needs of bicyclists utilizing the new convenience store."



**Figure 4: Pendant light on E. Broad Way, which is the same model as the streetlight to be installed in Lovettsville Square.**